

116TH CONGRESS
1ST SESSION

S. 3031

To amend the Immigration and Nationality Act to add membership in a significant transnational criminal organization to the list of grounds of inadmissibility and to prohibit the provision of material support or resources to such organizations.

IN THE SENATE OF THE UNITED STATES

DECEMBER 12, 2019

Mr. COTTON (for himself, Mrs. BLACKBURN, Mr. CORNYN, Mr. CRUZ, Mr. GRAHAM, Mr. HAWLEY, Mr. PERDUE, Mr. ROMNEY, and Mr. SASSE) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To amend the Immigration and Nationality Act to add membership in a significant transnational criminal organization to the list of grounds of inadmissibility and to prohibit the provision of material support or resources to such organizations.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Significant
5 Transnational Criminal Organization Designation Act”.

1 **SEC. 2. DESIGNATING, AS A SIGNIFICANT TRANSNATIONAL**
2 **CRIMINAL ORGANIZATION, THE FOREIGN OR-**
3 **GANIZATION RESPONSIBLE FOR MASS MUR-**
4 **DER IN SONORA, MEXICO ON NOVEMBER 4,**
5 **2019.**

6 (a) IN GENERAL.—Not later than 7 days after the
7 conclusion of the investigation by the Federal Bureau of
8 Investigation into the attack on, and killing of, 9 United
9 States-Mexican dual citizens near Bavispe, Sonora, Mexico
10 on November 4, 2019, the President shall submit a report
11 to Congress that identifies the foreign organization associ-
12 ated with the foreign persons who the President deter-
13 mines are responsible for such attack.

14 (b) DESIGNATION AS A SIGNIFICANT
15 TRANSNATIONAL CRIMINAL ORGANIZATION.—The report
16 submitted pursuant to subsection (a) shall include an
17 analysis of whether any organization or person that the
18 President determines to be responsible for the attack ref-
19 erenced in subsection (a) should be designated as a signifi-
20 cant transnational criminal organizations under section
21 219A of the Immigration and Nationality Act, as added
22 by section 3(b)(1).

1 **SEC. 3. INADMISSIBILITY OF MEMBERS OF SIGNIFICANT**
 2 **TRANSNATIONAL CRIMINAL ORGANIZATIONS.**

3 (a) IN GENERAL.—Section 212(a)(2)(F) of the Im-
 4 migration and Nationality Act (8 U.S.C. 1182(a)(2)(F))
 5 is amended to read as follows:

6 “(F) MEMBERSHIP IN A SIGNIFICANT
 7 TRANSNATIONAL CRIMINAL ORGANIZATION.—

8 “(i) IN GENERAL.—Any alien who—

9 “(I) is a member of a significant
 10 transnational criminal organization; or

11 “(II) is the spouse or child of an
 12 alien described in subclause (I),

13 is inadmissible.

14 “(ii) EXCEPTION.—Clause (i)(II) shall
 15 not apply to a spouse or child—

16 “(I) who did not know, or should
 17 not reasonably have known, that his
 18 or her spouse or parent was a member
 19 of a significant transnational criminal
 20 organization; or

21 “(II) whom the consular officer
 22 or Attorney General has reasonable
 23 grounds to believe has renounced the
 24 significant transnational criminal or-
 25 ganization to which his or her spouse
 26 or parent belongs.”.

1 (b) DESIGNATION OF SIGNIFICANT TRANSNATIONAL
2 CRIMINAL ORGANIZATIONS.—

3 (1) IN GENERAL.—Chapter 2 of title II of the
4 Immigration and Nationality Act (8 U.S.C. 1181 et
5 seq.) is amended by adding at the end the following:

6 **“SEC. 219A. DESIGNATION OF SIGNIFICANT**
7 **TRANSNATIONAL CRIMINAL ORGANIZATIONS.**

8 “(a) DESIGNATION.—

9 “(1) IN GENERAL.—The Attorney General is
10 authorized to designate an organization as a signifi-
11 cant transnational criminal organization in accord-
12 ance with this subsection if the Attorney General,
13 after consultation with the Secretary of State, the
14 Secretary of the Treasury, and the Secretary of
15 Homeland Security, determines that—

16 “(A) the organization is a foreign organi-
17 zation;

18 “(B) the organization—

19 “(i) engages in criminal activity that
20 involves or affects commerce in the United
21 States; or

22 “(ii) retains the ability and intent to
23 engage in such criminal activity; and

24 “(C) the criminal activity of the organiza-
25 tion threatens the security of United States na-

tionals or the national security of the United States.

“(2) PROCEDURE.—

“(A) NOTICE.—

“(i) TO CONGRESSIONAL LEADERS.—

Not later than 7 days before making a designation under this subsection, the Attorney General shall, by classified communication, notify the Speaker and Minority Leader of the House of Representatives, the President pro tempore, Majority Leader, and Minority Leader of the Senate, and the members of the relevant committees of the House of Representatives and the Senate, in writing, of—

“(I) the intent to designate an organization under this subsection; and

“(II) the findings made under paragraph (1) with respect to that organization, including the factual basis for such determination.

“(ii) PUBLICATION IN FEDERAL REGISTER.—The Attorney General shall publish the designation in the Federal Register

1 not later than 7 days after providing the
2 notification under clause (i).

3 “(B) EFFECT OF DESIGNATION.—A des-
4 ignation under this subsection—

5 “(i) shall take effect upon publication
6 under subparagraph (A)(ii), for purposes
7 of section 212(a)(2)(F) of this Act and
8 section 2339B of title 18, United States
9 Code; and

10 “(ii) shall cease to have effect upon
11 an Act of Congress disapproving such des-
12 ignation.

13 “(C) FREEZING OF ASSETS.—Upon notifi-
14 cation under paragraph (2)(A)(i), the Secretary
15 of the Treasury may require United States fi-
16 nancial institutions possessing or controlling
17 any assets of any foreign organization included
18 in the notification to block all financial trans-
19 actions involving those assets until further di-
20 rective from either the Secretary of the Treas-
21 ury, Act of Congress, or order of court.

22 “(3) RECORD.—

23 “(A) IN GENERAL.—In making a designa-
24 tion under this subsection, the Attorney Gen-
25 eral shall create an administrative record.

“(B) CLASSIFIED INFORMATION.—The Attorney General may consider classified information in making a designation under this subsection. Classified information shall not be subject to disclosure for such time as it remains classified, except that such information may be disclosed to a court *ex parte* and *in camera* for purposes of judicial review under subsection (c).

“(4) PERIOD OF DESIGNATION.—

“(A) IN GENERAL.—A designation under this subsection shall be effective for all purposes until revoked under paragraph (5) or (6) or set aside pursuant to subsection (c).

“(B) REVIEW OF DESIGNATION UPON PETITION.—

“(i) IN GENERAL.—The Attorney General shall review the designation of a significant transnational criminal organization under the procedures set forth in clauses (iii) and (iv) if the designated organization files a petition for revocation within the petition period described in clause (ii).

“(ii) PETITION PERIOD.—For purposes of clause (i)—

1 “(I) if the designated organiza-
2 tion has not previously filed a petition
3 for revocation under this subpara-
4 graph, the petition period begins 2
5 years after the date on which the des-
6 ignation was made; or

7 “(II) if the designated organiza-
8 tion has previously filed a petition for
9 revocation under this subparagraph,
10 the petition period begins 2 years
11 after the date of the determination
12 made under clause (iv) on that peti-
13 tion.

14 “(iii) PROCEDURES.—Any significant
15 transnational criminal organization that
16 submits a petition for revocation under
17 this subparagraph shall provide evidence in
18 that petition that the relevant cir-
19 cumstances described in paragraph (1) are
20 sufficiently different from the cir-
21 cumstances that were the basis for the des-
22 ignation such that a revocation with re-
23 spect to the organization is warranted.

24 “(iv) DETERMINATION.—

1 “(I) IN GENERAL.—Not later
2 than 180 days after receiving a peti-
3 tion for revocation submitted under
4 this subparagraph, the Attorney Gen-
5 eral shall make a determination re-
6 garding such petition.

7 “(II) CLASSIFIED INFORMA-
8 TION.—The Attorney General may
9 consider classified information in
10 making a determination in response to
11 a petition for revocation. Classified in-
12 formation shall not be subject to dis-
13 closure for such time as it remains
14 classified, except that such informa-
15 tion may be disclosed to a court ex
16 parte and in camera for purposes of
17 judicial review under subsection (c).

18 “(III) PUBLICATION OF DETER-
19 MINATION.—A determination made by
20 the Attorney General under this
21 clause shall be published in the Fed-
22 eral Register.

23 “(IV) PROCEDURES.—Any rev-
24 ocation by the Attorney General shall

1 be made in accordance with para-
2 graph (6).

3 “(C) OTHER REVIEW OF DESIGNATION.—

4 “(i) IN GENERAL.—If no review is
5 conducted pursuant to subparagraph (B)
6 during the 5-year period beginning on the
7 date on which a designation under this
8 subsection takes effect, the Attorney Gen-
9 eral shall review the designation of the sig-
10 nificant transnational criminal organiza-
11 tion in order to determine whether such
12 designation should be revoked pursuant to
13 paragraph (6).

14 “(ii) PROCEDURES.—If a review does
15 not take place pursuant to subparagraph
16 (B) in response to a petition for revocation
17 that is filed in accordance with that sub-
18 paragraph, then the review shall be con-
19 ducted pursuant to procedures established
20 by the Attorney General. The results of
21 such review and the applicable procedures
22 shall not be reviewable in any court.

23 “(iii) PUBLICATION OF RESULTS OF
24 REVIEW.—The Attorney General shall pub-

1 lish any determination made pursuant to
2 this subparagraph in the Federal Register.

3 “(5) REVOCATION BY ACT OF CONGRESS.—

4 “(A) IN GENERAL.—Except as provided by
5 subparagraph (B), Congress, by an Act of Con-
6 gress, may block or revoke a designation made
7 under paragraph (1) through the congressional
8 disapproval procedure set forth in section 802
9 of title 5, United States Code.

10 “(B) REFERENCES TO RULE.—In applying
11 the procedure, references to the term ‘rule’ in
12 such section 802 shall be deemed to refer to a
13 designation made under paragraph (1).

14 “(C) EFFECTIVE DATE.—A joint resolution
15 to block or revoke a designation made under
16 paragraph (1) shall not be subject to the proce-
17 dure set forth in such section 802 unless it is
18 introduced in either House of Congress during
19 the 60-day period beginning on the date on
20 which the Attorney General notifies Congress
21 pursuant to paragraph (2)(A)(i).

22 “(6) REVOCATION BASED ON CHANGE IN CIR-
23 CUMSTANCES.—

24 “(A) IN GENERAL.—The Attorney Gen-
25 eral—

1 “(i) may revoke a designation made
2 under paragraph (1) at any time; and

3 “(ii) shall revoke a designation upon
4 completion of a review conducted pursuant
5 to subparagraphs (B) and (C) of para-
6 graph (4) if the Attorney General deter-
7 mines that—

8 “(I) the circumstances that were
9 the basis for the designation have
10 changed in such a manner as to war-
11 rant revocation; or

12 “(II) the national security of the
13 United States warrants a revocation.

14 “(B) PROCEDURE.—The procedural re-
15 quirements under paragraphs (2) and (3) shall
16 apply to a revocation under this paragraph. Any
17 revocation shall take effect on the date specified
18 in the revocation or upon publication in the
19 Federal Register if no effective date is specified.

20 “(7) EFFECT OF REVOCATION.—The revocation
21 of a designation under paragraph (5) or (6) shall
22 not affect any action or proceeding based on conduct
23 committed before the effective date of such revoca-
24 tion.

1 “(8) USE OF DESIGNATION IN TRIAL OR HEAR-
2 ING.—If a designation under this subsection has be-
3 come effective pursuant to paragraph (2)(B), a de-
4 fendant in a criminal action or an alien in a removal
5 proceeding shall not be permitted to raise any ques-
6 tion concerning the validity of the issuance of such
7 designation as a defense or an objection at any trial
8 or hearing.

9 “(b) AMENDMENTS TO A DESIGNATION.—

10 “(1) IN GENERAL.—The Attorney General may
11 amend a designation under this subsection if the At-
12 torney General discovers that the organization has
13 changed its name, adopted a new alias, dissolved and
14 then reconstituted itself under a different name or
15 names, or merged with another organization.

16 “(2) PROCEDURE.—Amendments made to a
17 designation in accordance with paragraph (1) shall
18 be effective upon publication in the Federal Register.
19 Subparagraphs (B) and (C) of subsection (a)(2)
20 shall apply to an amended designation upon such
21 publication. Paragraphs (2)(A)(i), (4), (5), (6), (7),
22 and (8) of subsection (a) shall apply to an amended
23 designation.

24 “(3) ADMINISTRATIVE RECORD.—The adminis-
25 trative record shall be corrected to include the

1 amendments and any additional relevant information
2 that supports such amendments.

3 “(4) CLASSIFIED INFORMATION.—The Attorney
4 General may consider classified information in
5 amending a designation in accordance with this sub-
6 section. Classified information shall not be subject to
7 disclosure for such time as it remains classified, ex-
8 cept that such information may be disclosed to a
9 court ex parte and in camera for purposes of judicial
10 review under subsection (c).

11 “(c) JUDICIAL REVIEW OF DESIGNATION.—

12 “(1) IN GENERAL.—Not later than 30 days
13 after publication in the Federal Register of a des-
14 ignation, an amended designation, or a determina-
15 tion in response to a petition for revocation, the des-
16 ignated organization may seek judicial review in the
17 United States Court of Appeals for the District of
18 Columbia Circuit.

19 “(2) BASIS OF REVIEW.—Review under this
20 subsection shall be based solely upon the administra-
21 tive record, except that the Government may submit,
22 for ex parte and in camera review, classified infor-
23 mation used in making the designation, amended
24 designation, or determination in response to a peti-
25 tion for revocation.

1 “(3) SCOPE OF REVIEW.—The Court shall hold
2 unlawful and set aside a designation, amended des-
3 ignation, or determination in response to a petition
4 for revocation the court finds to be—

5 “(A) arbitrary, capricious, an abuse of dis-
6 cretion, or otherwise not in accordance with
7 law;

8 “(B) contrary to constitutional right,
9 power, privilege, or immunity;

10 “(C) in excess of statutory jurisdiction, au-
11 thority, or limitation, or short of statutory
12 right;

13 “(D) lacking substantial support in the ad-
14 ministrative record taken as a whole or in clas-
15 sified information submitted to the court under
16 paragraph (2), or

17 “(E) not in accord with the procedures re-
18 quired by law.

19 “(4) JUDICIAL REVIEW INVOKED.—The pend-
20 ency of an action for judicial review of a designation,
21 amended designation, or determination in response
22 to a petition for revocation shall not affect the appli-
23 cation of this section, unless the court issues a final
24 order setting aside the designation, amended des-

1 ignation, or determination in response to a petition
2 for revocation.”.

3 (2) CLERICAL AMENDMENT.—The table of con-
4 tents of the Immigration and Nationality Act (8
5 U.S.C. 1101 note) is amended by inserting after the
6 item relating to section 219 the following:

“Sec. 219A. Designation of significant transnational criminal organizations.”.

7 (c) PROVIDING MATERIAL SUPPORT OR RESOURCES
8 TO SIGNIFICANT TRANSNATIONAL CRIMINAL ORGANIZA-
9 TIONS.—Section 2339B of title 18, United States Code,
10 is amended—

11 (1) by inserting “or a significant transnational
12 criminal organization” after “foreign terrorist orga-
13 nization” each place such term appears;

14 (2) in subsection (a)(1), by amending the sec-
15 ond sentence to read as follows: “A person may not
16 be prosecuted for violating this paragraph unless the
17 person has knowledge that the organization referred
18 to in the previous sentence—

19 “(A) is a designated terrorist organization;

20 “(B) is a significant transnational criminal
21 organization;

22 “(C) has engaged or engages in terrorist
23 activity (as defined in section 212(a)(3)(B) of
24 the Immigration and Nationality Act); or

1 “(D) has engaged or engages in terrorism
2 (as defined in section 140(d)(2) of the Foreign
3 Relations Authorization Act, Fiscal Years 1988
4 and 1989).”; and
5 (3) in subsection (g)—

6 (A) in paragraph (5), by striking “and” at
7 the end;

8 (B) by redesignating paragraph (6) as
9 paragraph (7); and

10 (C) by inserting after paragraph (5) the
11 following:

12 “(6) the term ‘significant transnational criminal
13 organization’ means an organization so designated
14 under section 219A of the Immigration and Nation-
15 ality Act; and”.

○